SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-000410-001 DT 09/15/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

SAGUARO GOLD INC

WILLIAM W HOLDER

v.

SUCCESSFUL DOGS L L C (001)

MICHAEL G TAFOYA

REMAND DESK-LCA-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand, Appellee, Saguaro Gold, and Appellant, Successful Dogs, entered into a retail advertising contract on June 20, 2000, wherein Appellant agreed to purchase advertising from Appellee. Appellee sued Appellant for non-payment on the contract, and Appellee obtained a judgment on November 13, 2001, for $2,424.92. On November 19, 2001, Appellee issued a replacement summons and designated Appellant, Richard Majdanski, as "John Doe I," pursuant to Rule 10(f) of the Arizona Rules of Civil Procedure.[1] The contract between Appellant and Appellee provided that in consideration of Saguro Gold extending credit and publishing advertising, that: "(1) I (Majdanski) as an individual, or (2) as a partner or as an officer of the advertiser, hereby agrees [sic] and severally guarantees [sic] full payment, in accordance with SG terms." Richard Majdanski was manager of Successful Dogs, L.L.C., and identified himself as such in two different places on the contract. Appellee argues that by signing the contract Majdanski bound himself and personally guaranteed the contract. Mr.

[1] "When the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. When the defendant's true name is discovered the pleading or proceeding may be amended accordingly."

Majdanski asserts that he chose the second option that read "or (2) as a partner or as an officer of the advertiser," and is not personally liable for any damages as a result of the breach. On June 3, 2002, Appellee's motion for judgment on the pleadings against Mr. Majdanski was granted.

On August 5, 2002, the Scottsdale Justice Court granted judgment against Mr. Majdanski for $3,995.59.[2] On December 12, 2002, the Scottsdale Justice Court granted the Writ of Garnishment and Summons that Appellee filed on December 11, 2002, in the amount of $7,545.86. Bank of America answered the Writ of Garnishment and stated that Barbara and Richard Majdanski had a bank account. Mr. Majdanski objected to the Writ of Garnishment and requested a hearing. The hearing focused on whether the funds were community property. The parties agreed that the debt belonged to Mr. Majdanski because Barbara Majdanski did not sign the contract with Appellee. On January 23, 2003, Mr. Majdanski requested Rule 11[3] sanctions on the claim that Appellee, by filing the Writ of Garnishment, certified that it had done so after a "reasonable inquiry" as to the status of the bank account. On January 23, 2003, Appellee filed an Application for Attorney's Fees Incurred by Garnishment Proceedings. Appellee sought fees pursuant to A.R.S. §12-341.01(A). Appellee stated no grounds for the award except that it had incurred fees. Appellee also stated that the amount of the fees would be determined in an affidavit that would be filed later.

On February 3, 2003, Majdanski objected to Appellee's Application for Attorney's Fees Incurred by Garnishment Proceedings on several grounds. On February 4, 2003, the justice court held an evidentiary hearing and ruled that: 1) The funds in the Bank of America account were community property, and 2) Appellee would be awarded its reasonable attorney's fees against Majdanski. On this same day, the justice court issued an order to quash the Writ of Garnishment. Appellee subsequently filed a Statement of Costs and a form of judgment.[4] Appellee then filed an affidavit stating its attorney's fees and arguing that Appellee was entitled to fees because it was the successful party on the motion for judgment on the pleadings in the underlying case.[5] On February 20, 2003, the justice court denied Majdanski's request for fees and costs. On February 26, 2003, Majdanski filed an objection to Appellee's affidavit requesting attorney's fees, also objecting to the form of proposed judgment and Appellee's statement of costs. The justice court entered judgment for Appellee on March 14, 2003. Appellants, Successful Dogs, L.L.C. and Richard Majdanski now bring the matter before this court, having filed a timely notice of appeal.

The first issue before this court is whether the justice court erred by applying A.R.S. §12-341.01(A) to garnishment proceedings, when the garnishment statutes have their own fees provision in A.R.S. §12-1580(E). A.R.S. §12-341.01(A) states:

[2] This amount was determined by adding the November 13, 2001 judgment for $2,424.92, and $1,570.67 for fees and costs.
[3] Arizona Rules of Civil Procedure.
[4] Filed on February 12, 2003.
[5] Filed on February 12, 2003.

> In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees. If a written settlement offer is rejected and the judgment finally obtained is equal to or more favorable to the offer or than an offer made in writing to settle any contested action arising out of a contract, the offeror is deemed to be the successful party from the date of the offer and the court may award the successful party reasonable attorney fees. This section shall in no manner be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney fees.

This is a general statute that applies to a myriad of proceedings. A basic principle of statutory interpretation instructs that specific statutes control over general statutes.[6] Further, when a general and a specific statute conflict, a specific statute will be treated as an exception to the general, and the specific statute controls.[7] A.R.S. §12-1580(E), as Appellants correctly argue, is an explicit statute that applies expressly to fees incurred as a result of an objection to a garnishment, and therefore controls in this case. A.R.S. §12-1580(E) reads:

> The prevailing party may be awarded costs and attorney fees in a reasonable amount determined by the court. The award shall not be assessed against nor is it chargeable to the judgment debtor, unless the judgment debtor is found to have objected to the writ solely for the purpose of delay or to harass the judgment creditor.
> [emphasis added]

A.R.S. §12-1580(E) only applies if Appellants objected to the garnishment "solely for the purpose of delay or to harass the judgment creditor," which is clearly not the case. Appellants objected because they correctly believed that A.R.S. §12-341.01(A) did not apply to garnishment proceedings. Hence, the justice court erred by applying A.R.S. §12-341.01(A) to garnishment proceedings, when the garnishment statutes have a specific attorneys fees provision in A.R.S. §12-1580(E), which allow attorneys fees in limited circumstances.

The second issue is whether, pursuant to A.R.S. §12-1580(E), Appellee was entitled to an award of fees though Appellant was successful in quashing the Writ of Garnishment. As addressed above, it is clear that Appellee was not entitled to fees, for Appellants did not object to

[6] *City of Phoenix v. Superior Court,* 139 Ariz. 175, 178, 677 P.2d 1283, 1286 (1984); also see *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment System*, 181 Ariz. 95, 887 P.2d 625, Ariz.App. Div. 1, Dec 27, 1994.

[7] *Kearney v. Mid-Century Ins. Co.*, 22 Ariz.App. 190, 192, 526 P.2d 169, 171 (1974); also see *Mercy Healthcare Arizona, Inc. v. Arizona Health Care Cost Containment System*, 181 Ariz. 95, 887 P.2d 625, Ariz.App. Div. 1, Dec 27, 1994.

the garnishment "solely for the purpose of delay or to harass the judgment creditor." Therefore, the justice court erred in awarding fees to Appellee.

The third issue is whether the justice court erred by awarding $150.00 in costs to Appellee when Appellee allegedly did not incur $150.00 in costs. This issue concerns the sufficiency of evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[8] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[9] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[10] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[11] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[12] The Arizona Supreme Court has explained in *State v. Tison*[13] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[14]

Nothing in the record suggests that Appellee did not incur those expenses and consequently, the justice court's ruling will not be disturbed on appeal.

The final issue is whether the justice court abused its discretion by: 1) denying Appellant's request for fees and for Rule 11 sanctions when Appellee allegedly admitted, prior to garnishing the account, that Appellee did not perform an reasonable inquiry into the issue; 2)

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[8] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey,* 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission,* 94 Ariz. 113, 382 P.2d 226 (1963).

[9] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[10] *Guerra*, supra; *State v. Girdler,* 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[11] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[12] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[13] SUPRA.

[14] *Tison*, at 553, 633 P.2d at 362.

when Appellee allegedly admitted that it had no evidence to meet its clear and convincing evidence standard of proving that the garnished funds were Majdanski's sole and separate property; and 3) when Appellee allegedly forced Majdanski to go through several hearings though Appellee allegedly had no evidence to present proving that the garnished funds were Mr. Majdanski's sole and separate property. In Arizona, it is unambiguous that the awarding of attorney's fees is "discretionary with the trial court, and if there is any reasonable basis for the exercise of such discretion, its judgment will not be disturbed."[15] Denying Appellants' request for fees is not an abuse of discretion, but rather an *exercise* of such discretion.

Rule 11 of the Arizona Rules of Civil procedure reads:

> Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.
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> [emphasis added]

[15] *Schwartz v. Farmers Ins. Co. of Arizona*, 166 Ariz. 33, 38, 800 P.2d 20, 25 (App. 1990); also see *Associated Indemnity Corp. v. Warner,* 143 Ariz. 567, 694 P.2d 1181 (1985), and *Mullins v. Southern PacificTransp. Co.*, 174 Ariz. 540, 851 P.2d 839 (App. 1992).

In Arizona, if the facts relied upon by the justice court trial court in determining whether there was a violation of Rule 11 are disputed, an appellate court will review the factual determination of the justice court under the "abuse of discretion" standard.[16] Nothing in the record suggests that the justice court was clearly erroneous in its decision to deny the imposition of Rule 11 sanctions. Appellee had no way of knowing whether the bank account was community or sole property until the evidentiary hearing. Thus, the justice court properly denied the request for Rule 11 sanctions against Appellee.

IT IS THEREFORE ORDERED reversing in part, and affirming in part, the decision of the Scottsdale Justice Court.

IT IS FURTHER ORDERED denying both parties' requests for attorneys fees and costs on appeal.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further, if any, and future proceedings.

/ s /

JUDICIAL OFFICER OF THE SUPERIOR COURT

[16] *James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Protection*, 177 Ariz. 316, 319, 868 P.2d 329, 332 (App. 1993).